

### **REMARKS**

In amended Figure 1, the previously omitted element 103 has been added.

Claims 1-21 remain in this application. Claims 1-5, 9-11, 15, and 19 have been amended to correct various errors of a typographical nature. No new matter has been introduced by the amendments to the claims.

The examiner has acknowledged that claims 15 and 16 are directed to allowable subject matter.

Reconsideration of this application in light of the above amendments and the following remarks is requested.

#### **I. Objection to the Drawings**

The Examiner objected to the drawings for corrected drawings allegedly being excluded from a preliminary amendment. Amended drawings are included herewith. Accordingly, withdrawal of the objection to the Figures is respectfully requested.

#### **II. Claim Objections**

Claim 5 was objected to because of an informality. Claim 5 has been amended to remove the period at the end of line 3. Accordingly, withdrawal of the objection to claim 5 is respectfully requested.

#### **III. Rejections Under 35 U.S.C. §103**

##### **Claim 1**

Amended claim 1 recites the following:

1. A method of managing service requests in a communications network, the method comprising:
  - receiving a service request from a communications terminal;
  - receiving respective status information from each of a plurality of service providers adapted to respond to the service request, wherein the respective status

information comprises queue information of one of the plurality of service providers; responsive to receiving the status information, calculating a respective queue result of the service request for each of the plurality of service providers; and sending each respective queue result to the communications terminal.

Claim 1 was rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,389,028 to Bondarenko et al. ("Bondarenko") in view of U.S. Patent Application No. 2003/0108187 to Brown et al. ("Brown"). Applicant traverses this rejection on the grounds that these references are defective in establishing a prima facie case of obviousness with respect to claim 1.

As the PTO recognizes in MPEP § 2142:

*... The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness...*

It is submitted that, in the present case, the examiner has not factually supported a prima facie case of obviousness for the following, mutually exclusive, reasons.

**1. Even When Combined, the References Do Not Teach the Claimed Subject Matter**

The Bondarenko and Brown references cannot be applied to reject claim 1 under 35 U.S.C. § 103 which provides that:

*A patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains ... (Emphasis added)*

Thus, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. However, since neither Bondarenko and Brown teaches "receiving respective status information from each of a plurality of service providers adapted to respond to the service request, wherein the respective status information comprises queue information of one of the

plurality of service providers" nor "responsive to receiving the status information, calculating a respective queue result of the service request for each of the plurality of service providers" as is claimed in claim 1, it is impossible to render the subject matter of claim 1 as a whole obvious, and the explicit terms of the statute cannot be met.

For example, with regard to the claim 1 limitation of "receiving respective status information from each of a plurality of service providers adapted to respond to the service request, wherein the respective status information comprises queue information of one of the plurality of service providers," the examiner recites the following passage of Bondarenko as allegedly disclosing such a method step:

E-mail, Voice-mail, and other multi-media options are also available as long as they are supported at communication center 15.  
Bondarenko, Column 8, Lines 9-11.

Applicants respectfully disagree. In the cited passage, Bondarenko only recites various multimedia options for delivery of responses. In the cited example, e-mail, voice-mail, and other multi-media options may be used to deliver a response to a user. Bondarenko in no manner describes, suggest, or otherwise alludes to "receiving respective status information from each of a plurality of service providers adapted to respond to the service request" wherein the respective status information comprises queue information of one of the plurality of service providers. Rather, the multi-media options only provide information delivery mechanisms and do not have any associated queue to respond to a service request. For at least this reason, Bondarenko and Brown fail to describe or suggest each limitation of claim 1. Accordingly, withdrawal of the rejection of claim 1 is respectfully requested.

With regard to the claim 1 limitation of "responsive to receiving the status information, calculating a respective queue result of the service request for each of the plurality of service providers," the Examiner cites the following passage of Brown as allegedly disclosing such a method step:

In addition, controller 60 preferably monitors past and current call queue activity in order to estimate wait times, which are added to hold queue information database 72. Data storage system 62 includes a hold queue history database 66 and an individual caller history database 68 from which controller 60 calculates historical averages for call hold queue 70 in general and historical averages for a particular caller or group of callers. Average wait times are then updated in hold queue information database 72.

Brown, Paragraph 90 (Emphasis added).

Here, Brown only discloses calculating a historical average for a call hold queue and in no manner describes or suggests calculating “a respective queue result” of the service request for each of the plurality of service providers. For at least this reason, Bondarenko and Brown fail to describe or suggest each limitation of claim 1.

Thus, for this mutually exclusive reason, the examiner’s burden of factually supporting a *prima facie* case of obviousness has clearly not been met, and the rejection under 35 U.S.C. §103 should be withdrawn.

**2. The recognition of a problem, or of the source of the problem, is not obvious even though the solution to the problem may be obvious**

In the present case, it is apparent from a reading of the Bondarenko and Brown references that neither recognized the problem of providing information regarding queue depths for multiple media that may service a request. Rather, each of Bondarenko and Brown are directed to queue mechanisms for single media systems. Particularly, Bondarenko is directed to a queue system for a web site that facilitates IP telephony, and Brown is directed to a queue system for a telephone call center. Thus, this is a classic example of a solution to a problem being obvious only after recognition of the problem by the applicant and is part of the “subject matter as a whole” language of 35 U.S.C. § 103 which should always be considered in determining the obviousness of an invention under this statute.

Thus, for this independent reason, the examiner’s burden of factually supporting a *prima facie* case of obviousness has clearly not been met, and the rejection under 35 U.S.C. §103 should be withdrawn.

**3. The Combination of References is Improper**

There is another mutually exclusive reason why the Bondarenko and Brown references cannot be applied to reject claim 1 under 35 U.S.C. § 103.

§ 2142 of the MPEP also provides:

*...the examiner must step backward in time and into the shoes worn by the hypothetical 'person of ordinary skill in the art' when the invention was unknown and just before it was made.....The examiner must put aside knowledge of the applicant's disclosure, refrain from using hindsight, and consider the subject matter claimed 'as a whole'.*

Here, neither Bondarenko and Brown teaches, or even suggests, the desirability of the combination since neither teaches “receiving respective status information from each of a plurality of service providers adapted to respond to the service request, wherein the respective status information comprises queue information of one of the plurality of service providers” nor “responsive to receiving the status information, calculating a respective queue result of the service request for each of the plurality of service providers” as specified above and as claimed in claim 1.

Thus, it is clear that neither patent provides any incentive or motivation supporting the desirability of the combination. Therefore, there is simply no basis in the art for combining the references to support a 35 U.S.C. § 103 rejection.

In this context, the MPEP further provides at § 2143.01:

*The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.*

In the above context, the courts have repeatedly held that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination.

In the present case it is clear that the examiner's combination arises solely from hindsight based on the invention without any showing, suggestion, incentive or motivation in either

reference for the combination as applied to claim 1. Therefore, for this mutually exclusive reason, the examiner's burden of factually supporting a *prima facie* case of obviousness has clearly not been met, and the rejection under 35 U.S.C. §103 should be withdrawn.

Independent claim 9 recites similar features as claim 1 and was rejected for similar rationale as claim 1. Therefore, the same distinctions between Bondarenko and Brown and the claimed invention in claim 1 apply for claim 9. Accordingly, withdrawal of the rejection to claim 9 is respectfully requested.

#### Claim 19

Claim 19 recites the following:

19. A communications system comprising:  
a communication means for receiving service requests from a plurality of communication terminals, wherein the communication means is also adapted for sending available queue results to a communication terminal of the plurality of communication terminals wherein the communications means further comprises a means for determining call information data such that an identity of a caller can be determined;  
a queuing means for tracking the resources of a plurality of service providers; and  
a queuing results means for determining queue results, wherein the queuing results means comprises a queuing attribute means for determining the queue attributes of each service provider, and a queuing factor means for quantifying business relationships, and a customer relationship database for storing historic data regarding business relationships.

Claim 19 was rejected under 35 U.S.C. § 103 as being obviated by Bondarenko in view of Brown and further in view of U.S. Patent No. 6,493,695 to Pickering et al. ("Pickering"). Applicant traverses this rejection on the grounds that these references are defective in establishing a *prima facie* case of obviousness with respect to claim 1.

It is submitted that, in the present case, the examiner has not factually supported a *prima facie* case of obviousness for the following, mutually exclusive, reasons.

**1. Even When Combined, the References Do Not Teach the Claimed Subject Matter**

Since neither Bondarenko, Brown, nor Pickering teaches "a queuing means for tracking the resources of a plurality of service providers," nor "a queuing attribute means for determining the queue attributes of each of the plurality of service providers" as is claimed in claim 19, it is impossible to render the subject matter of claim 19 as a whole obvious, and the explicit terms of the statute cannot be met.

As discussed above with regard to claim 1, Bondarenko and Brown both fail to describe or suggest a mechanism for "tracking the resources of a plurality of service providers," nor a queuing mechanism for determining "queue attributes of each of the plurality of service providers." Pickering provides for none of the deficiencies of Bondarenko and Brown. For example, Pickering describes a mechanism for implementing a "universal media queue" for queuing customer data in a single queue, regardless of the media from which a customer interaction originated (See, for example, Pickering, Column 6, Line 62-Column 7, Line 24).

Thus, for this mutually exclusive reason, the examiner's burden of factually supporting a *prima facie* case of obviousness has clearly not been met, and the rejection under 35 U.S.C. §103 should be withdrawn.

**2. The recognition of a problem, or of the source of the problem, is not obvious even though the solution to the problem may be obvious**

In the present case, it is apparent from a reading of the Bondarenko, Brown, and Pickering references that none recognized the problem of providing information regarding queue depths for multiple media that may service a request. Rather, Bondarenko and Brown are directed to queue mechanisms for single media systems, and Pickering is directed to a mechanism for providing a universal queue for handling customer interactions from a variety of media. Thus, this is a classic example of a solution to a problem being obvious only after recognition of the problem by the applicant and is part of the "subject matter as a whole" language of 35 U.S.C. § 103 which should always be considered in determining the obviousness of an invention under this statute.

Thus, for this independent reason, the examiner's burden of factually supporting a *prima facie* case of obviousness has clearly not been met, and the rejection under 35 U.S.C. §103 should be withdrawn.

### **3. The Combination of References is Improper**

Here, neither Bondarenko, Brown, nor Pickering teaches, or even suggests, the desirability of the combination since none teach "a queuing means for tracking the resources of a plurality of service providers," nor "a queuing attribute means for determining the queue attributes of each of the plurality of service providers" as specified above and as claimed in claim 19.

Thus, it is clear that neither patent provides any incentive or motivation supporting the desirability of the combination. Therefore, there is simply no basis in the art for combining the references to support a 35 U.S.C. § 103 rejection.

In the present case it is clear that the examiner's combination arises solely from hindsight based on the invention without any showing, suggestion, incentive or motivation in either reference for the combination as applied to claim 19. Therefore, for this mutually exclusive reason, the examiner's burden of factually supporting a *prima facie* case of obviousness has clearly not been met, and the rejection under 35 U.S.C. §103 should be withdrawn.

### **IV. Allowable Subject Matter**

Applicants note with appreciation the indication of allowable subject matter in claims 15 and 16. Claim 15 has been amended to include all the limitations of the base claim. Claim 16 is dependent on claim 15. Accordingly, withdrawal of the objection to claims 15 and 16 is respectfully requested.

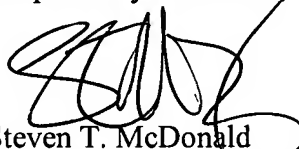


**V. Conclusion**

It is clear from all of the foregoing that independent claims 1, 9, and 19 are in condition for allowance. Dependent claims 2-8, 10-18, and 20-21 depend from and further limit independent claims 1, 9, and 19 and therefore are allowable as well.

The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

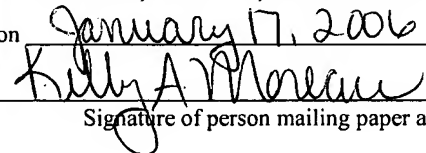


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Appl. No. 10/032,027  
Reply to Office action of Sep. 14, 2005

**Amendments to the Drawings:**

The attached sheet of drawings includes changes to Fig. 1. This sheet, which includes Fig. 1, replaces the original sheet including Fig. 1. In Figure 1, previously omitted element 103 has been added.

Attachment:      Replacement Sheet  
                     Annotated Sheet Showing Changes



Appl. No. 10/032,027  
Reply to Office action of Sep. 14, 2005  
Annotated Sheet Showing Changes

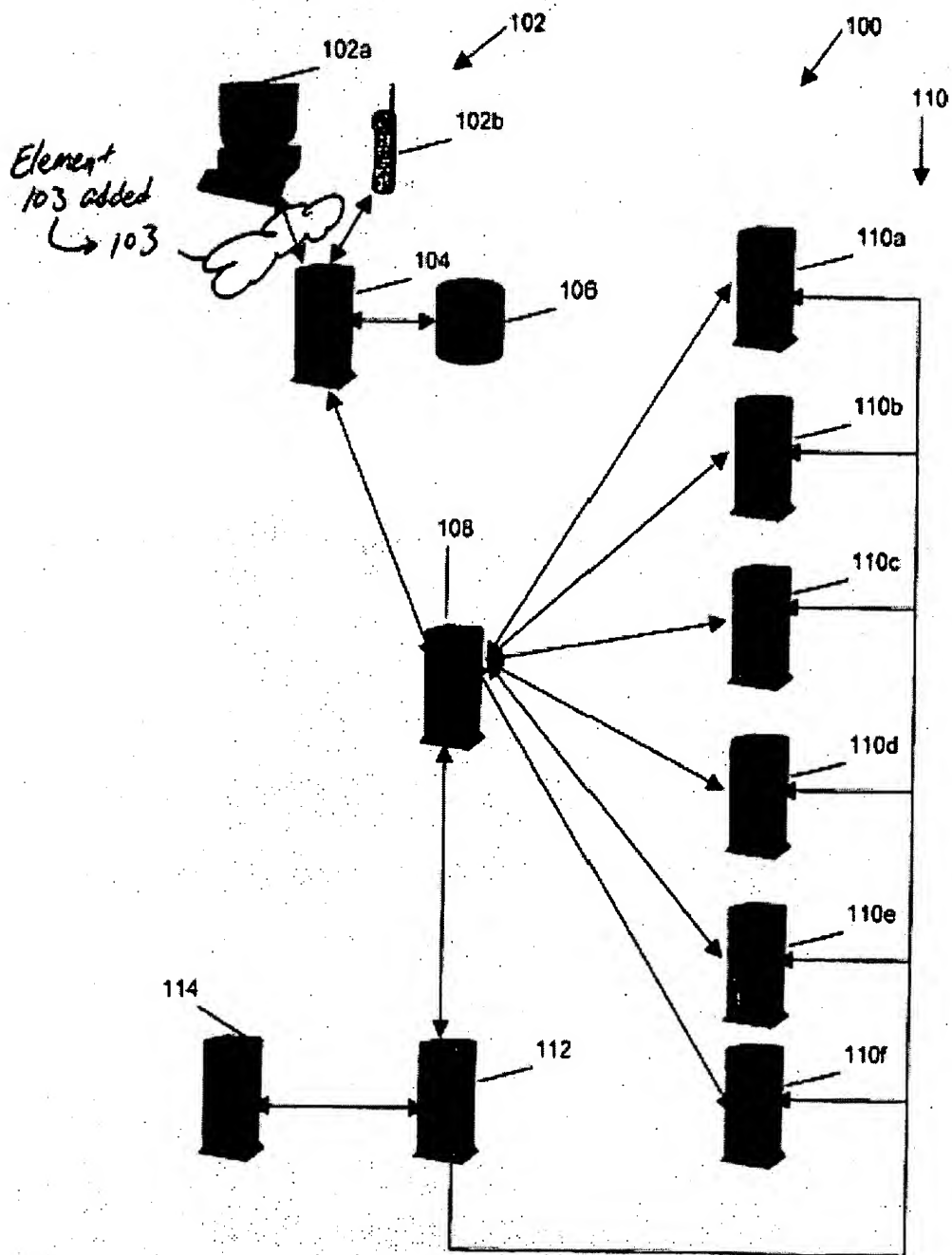


Fig. 1